



## Construction Board of Adjustments and Appeals of the City of Missouri City

Notice is hereby given of a meeting of the Construction Board of Adjustments and Appeals of the City of Missouri City to be held on **Thursday, January 29, 2009, at 7:00 p.m. at: City Hall, Council Chambers, 2<sup>nd</sup> Floor, 1522 Texas Parkway, Missouri City, Texas**, for the purpose of considering the following agenda items. All agenda items are subject to action.

1. Swearing In.
2. Call to Order.
3. Roll Call.
4. Election of Officers for the positions of Chairperson and Vice-Chairperson.
5. Approval of minutes from the last meeting of the Construction Board of Adjustments and Appeals on August 15, 2006.
6. Hearing request by Rudolf White Jr., relating to the application of the ICC International Fire Code, as amended, to open fires or burning on property located southwest of Texas Parkway (FM 2234) between Cartwright Road (FM 3345) and Turtle Creek Drive.
7. Adjournment.

In compliance with the Americans with Disabilities Act, the City of Missouri City will provide for reasonable accommodations for persons attending Construction Board of Adjustment and Appeal meetings. To better serve you, requests should be received 24 hours prior to the meeting. Please contact Patrice Fogarty, City Secretary, at 281.403.8685.

### CERTIFICATION

I certify that a copy of the January 29, 2009, agenda of items to be considered by the Construction Board of Adjustments of Appeals was posted on the City Hall bulletin board on January 26, 2009 at 12:25 p.m.

  
\_\_\_\_\_  
Maria Gonzalez, Deputy City Secretary

I certify that the attached notice and agenda of items for consideration by the City Council was removed by me from the City Hall bulletin board on the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Title: \_\_\_\_\_



**Construction Board of Adjustments and Appeals  
January 29, 2009**

- 5. Approval of minutes from the last meeting of the Construction Board of Adjustments and Appeals on August 15, 2006.**

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Minutes

# CITY OF MISSOURI CITY



## CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS MEETING MINUTES

The Construction Board of Adjustments and Appeals of the City of Missouri City, Texas, met on **Tuesday, August 15, 2006**, at the City Hall Council Chambers, Second Floor, 1522 Texas Parkway, Missouri City, Texas, at 7:00 p.m. to consider the following:

### 1. SWEARING IN

All members of the Construction Board of Adjustment and Appeals were sworn in by Deputy City Secretary Thelma Lenz.

### 2. CALL TO ORDER

City Attorney Powell called the meeting to order at 3:05 p.m.

### 3. ROLL CALL

The following were present: Board Members William Johnson, William Marshall, Roger Morris Sammy Freeman, Hugo Mondragon, and alternates Larry Blackmon and Howard Moline; New Hope Lutheran Church / Fort Bend Family Promise representatives Jim Uschrkat, Lyn Strom and Duane McCullough, City Attorney Powell, Building Official Lalo Flores, Commercial Plan Reviewer Ignacio Moreno, Fire Marshal Todd Pfenninger, and Deputy City Secretary Thelma Lenz. Also present were Fire Safety Specialist Jared Defoore and Planning Director Wayne Neumann.

After Roll Call, Board Member Roger Morris moved to nominate William Marshall to serve as Chairman of the Board. Hugo Mondragon seconded the motion. With all in favor, **Motion passed.**

### 4. Hearing on the appeal by James Uschrkat, relating the application of the ICC International Fire Code, 2003 edition, to the overnight housing of persons at New Hope Lutheran Church.

The basis for the appeal is that New Hope Lutheran Church wants to begin sheltering up to 15 homeless parents and children overnight in its Community Center. The Center was built in 1987 and, according to James Uschrkat with New

Hope, has been used as a general assembly area for church-related activities over the years, including youth gatherings, church festivities, and all-night vigils.

City Staff informed the Church that housing families constitutes a change in condition requiring the building to meet current Fire Code requirements for the appropriate occupancy classification for the new condition. The main code requirement to which the Church objects is the installation of a sprinkler system in the area where the homeless will sleep.

Mr. Uschkrat showed a slide presentation and explained the program and the need and benefit of addressing the homeless issue and providing a shelter for homeless families. He said the basis for this appeal is that he doesn't feel it's a change of occupancy issue, because they have youth sleepovers at the church all the time. He said that now, instead of lots of children sleeping over, it will be families. Mr. Uschkrat said he feels this service is a part of the Church's mission to the community. He said the bottom line is that the Church can't afford a sprinkler system and asked if there was something else the church could do to be compliant.

City Attorney Powell presented the City's stance on this issue. She said that our City ordinance, which adopted the standards of the International Fire and Safety Code, specifically outlines the safety requirements to house families at the Church. She said though she applauds the efforts of the Church in what they are trying to do, the City must make every effort to ensure the safety of the overnight occupants.

Fire Marshall Pfenninger stated that a less expensive kind of sprinkler might suffice, but the fact for the need to have the sprinklers remained under any scenario. As long as people were being housed over night, a sprinkler system would be required.

After hearing both sides of the appeal, Roger Morris moved that the request be denied. Sammy Freeman seconded the motion. With all in favor, **MOTION DENIED.**

**5. ADJOURN**

With no further business, it was moved and seconded to adjourn at 4:30 p.m.

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**Construction Board of Adjustments and Appeals  
January 29, 2009**

6. Hearing request by Rudolph White Jr., relating to the application of the ICC International Fire Code, as amended, to open fires or burning on property located southwest of Texas Parkway (FM 2234) between Cartwright Road (FM 3345) and Turtle Creek Drive.
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**Construction Board of Adjustments and Appeals  
Cover Memorandum  
January 29, 2009**

**To:** Construction Board of Adjustments and Appeals: Bill Marshall, Roger Morris, Sammy Freeman, William W. Johnson, Hugo Mondragon, Larry Blackmon (Alternate), and Albert Glover (Alternate)

**From:** Curtis Campbell, Fire Marshal  
Lalo Flores, Chief Building Official

**cc:** Frank Simpson, City Manager  
Ornita Green, Director of Planning  
Russell Sander, Fire Chief

**Re:** Appeal by Rudolph White, Jr. of Order by Fire Department to Extinguish Fire on January 2, 2009.

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**Facts:**

On January 2, 2009, a City Fire Department Engine Company noticed a column of smoke in the vicinity of Texas Parkway and Turtle Creek Drive. Upon arrival, the company detected a fire and ordered that it be extinguished. [See Attachment 1 for related Fire Incident Report]

On November 3, 2008, the City Council of Missouri City, pursuant to City Ordinance No. O-08-72, adopted the 2006 edition of the International Fire Code and made local amendments thereto. The ordinance provided that the 2006 edition of the International Fire Code and the related amendments became effective January 1, 2009. The provision applicable to the appeal before the Board is Section 307.1 which provides in pertinent part:

**307.1 General.** No person shall kindle or maintain any type of open fire or burning, including bonfires, recreational fires, and trench-burn fires within the city. Such open fires also are hereby declared to be public nuisances within 5,000 feet outside the city limits and into the city's extra-territorial jurisdiction (ETJ).

**Exception:**

This prohibition does not apply to live firefighting training conducted by the Fire Department in compliance with

TCEQ regulations, barbecue pits used for cooking, or an approved outdoor fireplace used for warmth that has three sides and a spark arrestor. The fire official may prohibit any or all fires, or order the immediate extinguishment of any and all fires when, in his sole discretion, atmospheric conditions or local circumstances make such fires an immediate threat to public safety or the smoke or ash from such fires becomes a public nuisance.

In December 2008, the TCEQ issued approval for certain burn equipment to be moved onto the property at issue in this appeal. [See Attachment 2 for state approval] Pursuant to state law, this approval did not provide exemptions to city requirements or permits. [See Attachment 3 for state requirements] Accordingly, an applicant requesting permission from the state to move burn equipment must still secure any required city permit. No city permit was secured prior to January 1, 2009. Furthermore, the City has no record that Pastor White nor any workers on the site in question were directed by the City Fire Department to extinguish any open fire or burning on the site prior to January 1, 2009.

On January 9, 2009, Pastor White appealed the order to extinguish the fire. [See Attachment 4 for appeal] Although Pastor White's appeal references the 2008 ordinances, the City Fire Department believes the appeal before the Board only relates to the ordinance which was adopted in 2008 and which became effective January 1, 2009.

### **Role of the Board of Adjustments and Appeals:**

Authority - The City has adopted, and made certain amendments to, the 2006 International Fire Code. Pursuant to Section 38-12 of the Code of Ordinances, the Board can entertain a claim a) that the true intent of the Fire Code or the rules legally adopted under it are being incorrectly interpreted by the Fire Department; b) that the provisions of the Fire Code do not fully apply in the instant case; or c) that an equivalent method of protection or safety is proposed. The Fire Code goes on to say the following, "*The construction board of adjustments and appeals shall have no authority to waive requirements of this chapter.*"

Vote – Three members constitute a quorum of the board. Pastor White must have at least three votes to succeed on his appeal to the Board.

### **Discussion:**

This issue will be discussed pursuant to the three tenets under which the board may consider Pastor White's appeal.

a) That the intent of the Fire Code or the rules legally adopted under it are being incorrectly interpreted by City staff.

The local amendments to Section 307.1 of the Fire Code prohibit any open fire or burning within the City. The prohibition does not apply in three circumstances: firefighting training, cooking in barbecue pits and using of outdoor fireplaces for warmth. Because the fire kindled and maintained on January 2, 2009, was a trench fire used to burn trees and other debris and because the three exceptions do not apply to this circumstance, city staff did not incorrectly apply or interpret the Fire Code provision in question.

b) That the provisions of the Fire Code do not fully apply in the instant case;

The discussion as to the applicability of the Fire Code is the same as recited in Section a) above. The type of burn kindled and maintained on January 2, 2009, falls squarely within the provisions of Section 307.1 of the Fire Code as amended by the City.

c) That an equivalent method of protection or safety is proposed

Pastor White has proposed another method of protection of accomplishing his purpose. It is the use of an ACI (air curtain incinerator) with an above ground firebox. The Fire Department does not believe this approach provides an equivalent method of protection or safety because the alternate process is identical to the trench burn except that the materials are burned above ground and contained in a firebox. .

Additionally, City Staff believes that equivalent methods of accomplishing the task of removal of trees and debris which do not violate the Fire Code or its local amendments are available to the property owner. The property owner could remove the trees and debris by loading it on trucks or other vehicles and moving it to an approved removal site. Alternatively, the property owner could mulch the trees and debris and load such mulch on trucks or other vehicles and move it to any approved removal site.

City Staff is of the opinion that either of these approaches will not in any way lessen the health, life and fire safety requirements. In fact, these other approaches are currently allowed as permissible activities and are not regulated by the Fire Code.

### **Staff Recommendation**

Based upon the facts and discussion above, Pastor White should be required to adhere to the current Fire Code requirements as they apply to the prohibition of open fires or burning in the City. Pastor White's appeal should be denied.

# **ATTACHMENT 1**

Prepared: 1/22/09, 13:11:46

Program: FI200L

A	GS407 TX	1/02/09	Station #4	01-2009-0000023-000	NFIRS - 1
	FDID State	Incident date	Station	Incident number	Basic

B	No	6710	Intersection	No
	Alternative location	Census tract	Location	Emergency

TEXAS PKY, MISSOURI CITY, TX, 77459

Address

TURTLE CREEK

Cross street or directions

C Construction or demolition landfill fire  
Incident type

D None  
Aid given or received

E1	Date	Time	E2 B Shift	1	District #3
Alarm	1/02/09	9:27:21	Shift	Alarms	District
Dispatch	1/02/09	9:27:57			
Enroute	1/02/09	9:27:57			
Arrival	1/02/09	9:27:57			
Controlled	0/00/00	0:00:00			
Last unit cleared	1/02/09	9:35:27			

F Investigate	Refer to proper authority
Primary action taken (1)	Additional action taken (2)

G1	Yes	Apparatus	Personnel	No	G2	Losses	Value
Apparatus/	Suppression	1	4	Resource counts	Property	1	1
personnel	EMS	0	0	include aid	Contents	1	1
form used	other	0	0	received resources			

H1	Injuries	Deaths	H3 None
Fire service	0	0	Hazardous materials release
Civilian fire	0	0	

I Not mixed use	J Open land or field
Mixed use property	Property use

K1 E34	Reportee		
Name	Involvement type	Phone number	
000000 TEXAS PW, MISSOURI CITY, TX, 77459	*ERROR	0/00/0000	*ERROR*
Address	Gender	Age	Birth date Race
JAMES JOHNSON	Employee		936-499-5601 LA STAPLETON EXCAVATION
Name	Involvement type	Phone number	Business name
15455 TOWERWOOD, CONROE, TX, 77306	*ERROR	29	3/14/1979 White Non-Hisp
Address	Gender	Age	Birth date Race Ethnicity

M KENNETH KEEFE	Lt. EMT-P	OFFICER IN CHARGE	1/02/09
Officer in charge	Position or rank	Assignment	Date

Prepared: 1/22/09, 13:11:46

Program: FI200L

A	GS407 TX	1/02/09	Station #4	01-2009-0000023-000	NFIRS - 2
	FDID State	Incident date	Station	Incident number	Fire
B1	Not residential		C None	None	
	Estimated number of residential units		On-site material 1	Material 1 storage use	
B2	Buldings not involved				
	Number of buildings involved				
B3	None				
	Acres burned (outside fires)				
D1	Construction/renovation area		E1 Intentional		
	Area of fire origin		Cause of ignition		
D2	Heat from other open flame or smoking materials		E2 None		
	Heat source		Factor 1 contributing to ignition		
D3	Heavy vegetation - not crop, including trees		E3 None		
	Item first ignited		Human factors contributing to ignition		
	Yes				
	Spread confined to object of origin				
D4	Wood or paper, processed, other				
	Type of material first ignited				
F1	None		F2		
	Equipment involved in ignition		Equipment power		
	Brand		F3		
	Model		Equipment portability		
	Serial number				
	0000				
	Equipment year				
G	None				
	Fire suppression factor 1				
H1	None		H2		
	Mobile property involved		Mobile property type		
			Mobile property make		
			Mobile property model		
			0000		
			Year License plate State VIN		

Prepared: 1/22/09, 13:11:46

Program: FI200L

A	GS407 TX	1/02/09	Station #4	01-2009-0000023-000	NFIRS - 9/10
	FDID State	Incident date	Station	Incident number	Apparatus/Personnel

B	Apparatus	Type	Personnel	Use	Action taken	Emergency
	E34	Engine	4	Suppression		No
	Dispatched	1/02/09	9:27:57			
	Enroute	1/02/09	9:27:57			
	At Scene	1/02/09	9:27:57			
	In Service	1/02/09	9:35:27			

Employee	Assignment	Position	Action taken
398 KENNETH KEEFE	OFFICER IN CHARGE	Lt. EMT-P	
507 GARY SCHULZE	OPERATOR	Firefighter EMT-B	
640 MATTHEW RIOS	FIREFIGHTER	Firefighter EMT-B	
718 LUIS CARMONA	FIREFIGHTER	Firefighter EMT-B	

Prepared: 1/22/09, 13:11:46

Program: FI200L

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A	GS407 TX	1/02/09	Station #4	01-2009-0000023-000	
	FDID State	Incident date	Station	Incident number	Equipment used

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## Apparatus

E34 No equipment used

Prepared: 1/22/09, 13:11:46

Program: FI200L

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A	GS407 TX	1/02/09	Station #4	01-2009-0000023-000	
	FDID State	Incident date	Station	Incident number	Additional information

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Prepared: 1/22/09, 13:11:46

Program: FI200L

A	GS407 TX	1/02/09	Station #4	01-2009-0000023-000	
	FDID State	Incident date	Station	Incident number	Narratives

**B Narrative type: Incident**

<b>Narrative title</b>	<b>Entry date</b>	<b>Entered by employee</b>
Communications Div. Narra 090000023 UNDETERMINED/ LIGHTS	1/02/09	673 *ERROR*

<b>Narrative title</b>	<b>Entry date</b>	<b>Entered by employee</b>
Communications Div. Narra	1/02/09	4 ENGINE 4

CMMD TERM/ ASG COMP / FIRE WILL BE EXT INGUISHED W/ IN THE HR  
(09:35:26 ON 01/02/09)

<b>Narrative title</b>	<b>Entry date</b>	<b>Entered by employee</b>
Incident Narrative	1/02/09	398 KENNETH KEEFE

While enroute to maintenance, E34 noted a smoke column and investigated to find a controlled burn. E34 made contact with operator on location who presented a valid burn permit from TCEQ. E34 advised a Missouri City burn permit would be required and ordered the fire be extinguished. Operator advised he would comply and E34 returned to service, command terminated assignment complete.

# **ATTACHMENT 2**

**Highland****CONSTRUCTION****11720 Forest Glen Dr.****Wills, TX 77318****936-890-2793****FACSIMILE TRANSMITTAL SHEET****TO:****FROM:**

Paul Carter

**COMPANY:**

Linda

**DATE:**

12-05-08

**FAX NUMBER:**

TCEQ

**NO. OF PAGES**

3 (with Cover)

**PHONE NUMBER:**

713-767-3761

**SENDER'S REF. NO:****CC:****YOUR REF. NO:**

(URGENT)

(FOR REVIEW)

(PLEASE COMMENT)

(PLEASE REPLY)

**NOTES/COMMENTS**



**Texas Commission on Environmental Quality  
Regional Notification  
Standard Permits/Permits by Rule Relocation Form**

This form should be used in two circumstances: 1) Voluntarily for specified portable facilities under standard permit; and 2) As required for specified facilities under permit by rule (PBR) - see Section II. A Core Data form is not required to be submitted with this form if information in Section I (A) is completed. Checklists for the individual standard permit or PBR, as well as any appropriate referenced Tables should be attached, along with supporting information as requested in the form below. All information should be mailed or faxed to the appropriate regional office and any local air pollution control programs.

<b>I. REGISTRANT INFORMATION</b>			
A. TCEQ Customer Reference Number (No.): CN- 603110685			
TCEQ Regulated Entity No. RN- 105088819			
Air Account ID No. (if known):		Equipment Serial/ID No.:	
B. Company or Other Legal Customer Name (must be same as Core Data "Customer" if previously submitted):			
Company Contact Name: Paul Coffey		Title: owner	
Mailing Address: 11720 Forest Glen Dr			
City: Willis	State: Texas	Zip Code: 77318	
Phone: 936-890-5976	Fax No.:	E-mail Address:	
<b>II. FACILITY AUTHORIZATION AND SITE INFORMATION</b>			
Name and Type of Facility: Baptist Church		<input type="checkbox"/> Permanent <input checked="" type="checkbox"/> Portable	
Address: 3222 Texas Parkway		City: Missouri City, TX	County: Ft. Bend
If no street address, provide written driving directions to the site: (attach description if additional space is needed) off FM 2234 and Richard			
Standard Permit Notification		PBR Notification	
Standard Permit Registration Number:		PBR Registration Number: 79478L001	
Standard Permit Type (Check any that apply): <input type="checkbox"/> Asphalt Concrete Plant Public Works Project <input type="checkbox"/> Concrete Batch Plant Public Works Project <input type="checkbox"/> Temporary Rock Crusher (Tier I or Tier II)		PBR Rule (Check any that apply): <input type="checkbox"/> Air Curtain Incinerator (Section 106.496) <input type="checkbox"/> Have submitted my federal operating permit application. <input type="checkbox"/> Remediation (Section 106.533) <input type="checkbox"/> Replacement Facility (Section 106.264) <input type="checkbox"/> Remediation Update (Section 106.533)	
Expected Arrival Date: 12-19-08		Departure Date: January 1, 2009	
Time at Site: 2 weeks		Hours of Operation: 8 to 4 p.m.	
Is there another facility at this site?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
If YES, enter facility type:		Permit or Registration No.:	
<b>III. TECHNICAL INFORMATION AND REQUIREMENTS</b>			
A. Any changes to permitted sources or controls? If "YES," please attach detailed description.		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	

AIR PERMITS

12/03/2008 10:03



**Texas Commission on Environmental Quality  
Regional Notification  
Standard Permits/Permits by Rule Relocation Form**

III. TECHNICAL INFORMATION AND REQUIREMENTS (continued)	
B. Is a checklist attached which shows how the facility meets all requirements of the PBR or Standard Permit? If "NO," the applicant must attach detailed documents which show how all general and specific requirements will be met	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
C. Is an applicable Table attached? (If "YES," list Table number) (21 Acres)	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
D. Is a plot plan attached (include a scale, plant boundaries, all equipment, and distance/direction to nearest property line)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
Is an area map attached (include location relative to landmarks and distance/direction to the nearest structure)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
E. What is the distance from this facility's emission release point to the nearest property line?	300ft. plus. Feet NOT cleared yet
What is the distance from this facility's emission release point to the nearest off-property structure?	N/A Feet
IV. SIGNATURE FOR NOTIFICATION	
The signature below indicates that I have knowledge of the facts herein set forth and that the same are true and correct to the best of my knowledge and belief. I further state that to the best of my knowledge and belief, the facility will satisfy the conditions and limitations of the indicated standard permit or permit by rule. The facility will operate in compliance with all regulations of the Texas Commission on Environmental Quality and with U.S. Environmental Protection Agency regulations governing air pollution.	
Name: Paul Coffey by George Coffey	Please Print Name
Signature: <i>George Coffey</i>	Date: December 4, 2008

**Highland**  
**CONSTRUCTION**  
11720 Forest Glen Dr.  
Wills, TX 77318  
936-890-2793

FACSIMILE TRANSMITTAL SHEET

TO: \_\_\_\_\_ FROM: Paul Coffey  
COMPANY: Inda DATE: 12-05-08  
FAX NUMBER: TC&Q NO. OF PAGES 3 (With Cover)  
PHONE NUMBER: 713-773761 SENDER'S REF. NO: \_\_\_\_\_  
CC: \_\_\_\_\_ YOUR REF. NO: \_\_\_\_\_  
(URGENT) (FOR REVIEW) (PLEASE COMMENT) (PLEASE REPLY)

NOTES/COMMENTS

I am re-faxing this in with corrections  
on both the start date and ending date.  
George Coffey



**Texas Commission on Environmental Quality  
Regional Notification  
Standard Permits/Permits by Rule Relocation Form**

This form should be used in two circumstances: 1) Voluntarily for specified portable facilities under standard permit; and 2) As required for specified facilities under permit-by-rule (PBR) - see Section II. A Core Data form is not required to be submitted with this form if information in Section I (A) is completed. Checklists for the individual standard permit or PBR, as well as any appropriate referenced Tables should be attached, along with supporting information as requested in the form below. All information should be mailed or faxed to the appropriate regional office and any local air pollution control programs.

<b>I. REGISTRATION INFORMATION</b>			
A. TCEQ Customer Reference Number (No.). CN- 603110685			
TCEQ Registered Entity No.: RN- 105088819			
Air Account ID No. (if known):		Equipment Serial/ID No.:	
B. Company or Other Legal Customer Name (must be same as Core Data "Customer" if previously submitted):			
Company Contact Name: Paul Coffey		Title: owner	
Mailing Address: 11720 Forest Glen Dr			
City: Willis	State: Texas	Zip Code: 77318	
Phone: 936-890-5976	Fax No.:	E-mail Address:	
<b>II. FACILITY INFORMATION AND SITE INFORMATION</b>			
Name and Type of Facility: Baptist Church		<input type="checkbox"/> Permanent <input checked="" type="checkbox"/> Portable	
Address: 3222 Texas Parkway	City: Missouri City, TX	County: Ft. Bend	
If no street address, provide written driving directions to the site: (attach description if additional space is needed) off FM 2234 and Richard			
Standard Permit Registration Number:		PBR Registration Number: 794784001	
Standard Permit Type (Check any that apply): <input type="checkbox"/> Asphalt Concrete Plant Public Works Project <input type="checkbox"/> Concrete Batch Plant Public Works Project <input type="checkbox"/> Temporary Rock Crusher (Tier I or Tier II)		PBR Rule (Check any that apply): <input type="checkbox"/> Air Curtain Incinerator (Section 106.496) <input type="checkbox"/> Have submitted my federal operating permit application. <input type="checkbox"/> Remediation (Section 106.533) <input type="checkbox"/> Replacement Facility (Section 106.264) <input type="checkbox"/> Remediation Update (Section 106.533)	
Expected Arrival Date: 12-30-08		Departure Date: January 14, 2009	
Time at Site: 2 weeks		Hours of Operation: 8 To 4 p.m.	
Is there another facility at this site?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
If YES, enter facility type:		Permit or Registration No.:	
<b>III. TECHNICAL INFORMATION AND REQUIREMENTS</b>			
A. Any changes to permitted sources or controls? If "YES," please attach detailed description.		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	



**Texas Commission on Environmental Quality  
Regional Notification  
Standard Permits/Permits by Rule Relocation Form**

<b>III. TECHNICAL INFORMATION AND REQUIREMENTS (continued)</b>	
B. Is a checklist attached which shows how the facility meets all requirements of the PBR or Standard Permit? If "NO," the applicant must attach detailed documents which show how all general and specific requirements will be met	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
C. Is an applicable Table attached? If "YES," list Table number: (21 Acres)	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
D. Is a plot plan attached (include a scale, plant boundaries, all equipment, and distance/direction to nearest property line)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
Is an area map attached (include location relative to landmarks and distance/direction to the nearest structure)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
E. What is the distance from this facility's emission release point to the nearest property line?	300 ft. plus. Feet
What is the distance from this facility's emission release point to the nearest off-property structure?	Not cleared yet N/A Feet
<b>IV. SIGNATURE FOR NOTIFICATION</b>	
The signature below indicates that I have knowledge of the facts herein set forth and that the same are true and correct to the best of my knowledge and belief. I further state that to the best of my knowledge and belief, the facility will satisfy the conditions and limitations of the indicated standard permit or permit by rule. The facility will operate in compliance with all regulations of the Texas Commission on Environmental Quality and with U.S. Environmental Protection Agency regulations governing air pollution.	
Name: Paul Coffey by George Coffey	Please Print Name
Signature: <i>George Coffey</i>	Date: December 4, 2008

# **ATTACHMENT 3**



## Fact Sheet for Updated Permit by Rule §106.496 Air Curtain Incinerators authorizing Trench Burners and Above-Ground Fireboxes

The commission has recently amended the Permit by Rule (PBR) for 30 Texas Administrative Code § 106.496, "Air Curtain Incinerators" (ACI) which covers trench burners and above-ground fireboxes. As of June 30, 2004 the requirements for ACIs have changed. Under the new PBR, there are different technical requirements for temporary and permanent facilities, as well as distinctions for traditional trench burners and newer above-ground fireboxes. The recent rule changes are intended to streamline the PBR process, update administrative and technical requirements, and address unnecessary registration and fee requirements. Where applicable, the PBR is consistent with other state and federal air and waste laws and rules. This fact sheet highlights the new requirements for the regulated community. Specific requirements can be found by completing the §106.496 checklist through the APD PBR webpage at [www.tceq.state.tx.us/permitting/air/nav/pbr\\_forms.html](http://www.tceq.state.tx.us/permitting/air/nav/pbr_forms.html) or by reviewing the rule language attached to this Fact Sheet.

### Portable ACI Administrative Requirements

- ! Initial Registration is required for any portable ACI using this PBR. This registration includes a current agency Core Data Form and the most current Form PI-7 "Registration for Permits By Rule" with all information accurately completed, along with a §106.496 Checklist. To expedite review, the PI-7 registration request should be sent by fax to the Air and Waste Applications Team, Permits Administrative Review (PAR) Section in Austin at (512) 239-2123 and copies faxed to the appropriate Regional office and local air pollution control programs. Since a registration fee is also required, a copy of the PI-7 and fee should be mailed to the Fiscal Division (see PI-7 Form Instructions). The registration will be reviewed by the Air Permits Division, and a written response must be received by the company prior to construction of the ACI at the initial site.
- ! Relocation Notification is required for portable ACIs as they relocate to additional sites after the initial registration. This notification includes the Form "Regional Notification - Standard Permit / Permits by Rule Relocation Form", a §106.496 Checklist, an area map, and a plot plan. No fee is required for notifications. The notification form should be mailed or faxed to the appropriate Regional office and local air pollution control programs at least 14 days prior to construction at the proposed site. A response is not required, nor typically will be received, prior to operation of the ACI at the site.
- ! Multiple ACIs at a given site may be combined in a single registration or notification.
- ! Emergency clean-up operations performed by any ACI requires a Notification to the Regional office and local air pollution control programs as soon as possible prior to operation but does not have to meet the 14 day requirement.
- ! Registration Renewal with a PI-7 Form is required when any notice of enforcement is issued by the commission, or a delegated representative, or every five years, whichever occurs first (see Initial Registration for all requirements).

### Permanent ACI Administrative Requirements

- ! Initial Registration is required for any permanent ACI using this PBR (see above *Initial Registration* for details).
- ! If located at a landfill site, ACIs must also obtain a separate authorization under 30 TAC §330.4 and be located in an undisturbed area of the landfill.
- ! Federal requirements must be addressed for all registrations for permanent ACIs. The registration must address the applicability and compliance with federal New Source Performance Standards (NSPS) Subpart CCCC, effective January 30, 2001 for all Commercial and Industrial Solid Waste Incineration Units.

### Technical Requirements for all ACIs

- ✓ Only clean wood or brush can be burned. This does not include lumber that have been painted, stained, or pressure-treated.
- ✓ All ACIs must be located at least 300 feet from the closest property line or any other facility (including other ACIs at the site).
- ✓ Most facilities may operate up to 600 hours per year or 180 consecutive days.
- ✓ Burning can begin one hour after sunrise and must cease one hour before sunset.
- ✓ Material cannot be stacked above the air curtain, dimensions for the trench or firebox are specified by the PBR, and safety restrictions are included in the conditions.
- ✓ Visible emissions shall not be observed leaving the property, and best management practices should be used to ensure smoke and ash dust are minimized.
- ✓ Several methods of ash disposal are allowed which meet state waste permit rules.
- ✓ If any condition of the PBR is not being met, the ACI should be shutdown immediately until the situation is rectified.
- ✓ The PBR does not supercede any local permit requirements or restrictions.

If you have questions, please call the Air Permits Division, General/Standard/Permits by Rule (GSR) Section at 512-239-1250.

### **§106.496. Air Curtain Incinerators.**

Effective June 30, 2004

- (a) **Applicability.** The commission encourages the recycling of the materials specified in this section. Composting, mulching, or other processing to produce a useable material can be authorized by §332.8 of this title (relating to Air Quality Requirements). This section authorizes any air curtain incinerator used for the burning of trees, clean lumber, and brush from land-clearing as referenced in 40 Code of Federal Regulations §60.2245, right-of-way maintenance, emergency clean-up operations, noncommercial industrial sites, and municipal solid waste sites, if operated in accordance with this section.
- (b) **Scope and terms.** The following terms apply only to this section.
- (1) **Air curtain incinerator (ACI)** - An incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.
  - (2) **Clean lumber** - Wood or wood products that have been cut or shaped and includes wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate, copper arsenate, pentachlorophenol, or creosote.
  - (3) **Emergency cleanup** - The removal and disposal of wastes resulting from events such as high winds, floods, and other events of nature that are necessary to protect public health and safety.
  - (4) **Land-clearing** - The removal of trees, brush, and other vegetative matter from agriculture, forest management, or land development.
  - (5) **Municipal solid waste sites** - Landfills that may burn on- or off-site generated waste as specifically authorized by the executive director under §330.4 of this title (relating to Permit Required).
  - (6) **Noncommercial industrial sites** - Locations at which on-site generated waste resulting from the processing or manufacturing of products may be burned. These industrial sites must be noncommercial, as limited by §335.2(d)(1) of this title (relating to Permit Required), and burn only on-site generated waste that results from the processing or manufacturing of products, and do not include sites that accept off-site generated waste for disposal or destruction.
  - (7) **Site** - One or more contiguous or adjacent properties that are under common control of the same person, or persons under common control.
- (c) **Operational limits.**
- (1) **Distance limitations.** The ACI must be operated at least 300 feet from the closest property line and any other facility with an air permit authorization under §116.110 of this title (relating to Applicability), or any ACI operating under this section.
  - (2) **Facility locations.** ACIs may not be operated at a given site more than the following.
    - (A) All facilities may operate up to a total of 600 hours in any rolling 12-month period.
    - (B) Portable facilities temporarily located at a site may operate up to 180 consecutive calendar days or 600 hours, whichever occurs first. The ACI must be removed from the site after ceasing operation.
    - (C) Permanent facilities may process materials for municipal solid waste or noncommercial industrial sites only.
  - (3) **Daily operation.**

- (A) Daily burning must not commence earlier than one hour after sunrise.
  - (B) Burning must be completed on the same day, not later than one hour before sunset. At the end of the burn, embers must not be flaming or smoking, and no additional fuel may be added to the ACI.
  - (C) Material must not be added to the ACI in such a manner as to be stacked above the air curtain.
  - (D) An operator shall remain with the ACI at all times when it is operating.
  - (E) The ACI blower must remain on at the end of daily burning until enough material is consumed so that any remaining material in the trench does not flame or cause smoke that exceeds the requirement of this section when the blower is turned off.
  - (F) Material not being worked, and material being stockpiled to be burned at a later date, must be kept at least 75 feet from the trench or firebox.
- (4) **Visible emissions.**
- (A) Visible emissions from an ACI, stockpiles, work areas, and any in-plant roads associated with the facility must not leave the property for a period exceeding 30 seconds in any six-minute period as determined by United States Environmental Protection Agency Test Method 22.
  - (B) Best management practices must be used to ensure that the ACI blower is operated in a manner to minimize smoke and ash becoming airborne.
- (5) **Emissions from products of combustion.** Products of combustion (sulfur dioxide, nitrogen oxides, and carbon monoxide) and volatile organic compounds are authorized if the facility is operated in compliance with this section.
- (6) **Compliance.** Upon notification by a representative of the commission or any local air pollution control program having jurisdiction that the ACI is not complying with the conditions of this section, additional material must not be added to the ACI until the facility returns to compliance.
- (d) Trench burning. An ACI operation using a trench and air manifold system must meet the following conditions.
- (1) At all times, trench dimensions must not exceed 12 feet in width, 35 feet in length, and be no less than ten feet in depth, such that the combustion of the materials within the trench is maintained.
  - (2) The length of the trench must not exceed the length of the air blower manifold.
  - (3) The walls of the trench must be maintained such that they remain sufficiently vertical to maintain the air curtain.
  - (4) Upon removal of the ACI from the burn site, ash may be left in the trench, subject to the conditions of this section, and the trench must be completely filled with incombustible material and covered with soil.
- (e) Firebox burning. An ACI operation using a manufactured aboveground container and blower system must meet the following requirements and operational limits.
- (1) The interior dimensions of the firebox must not exceed eight feet in width, 35 feet in length, and be no less than six feet in depth.
  - (2) The walls of the ACI must be maintained such that they remain sufficiently vertical to maintain the air curtain and the combustion of the materials within the ACI.
  - (3) The air blower manifold length must be equal to the length of the burning area.
  - (4) Firebox facilities, which are equipped with refractory walls and above-fire air supply, may

operate up to a total of 750 hours in any rolling 12-month period.

(f) Ash processing.

- (1) **Handling.** All ash generated as a result of the operation of an ACI must be handled in accordance with the following requirements.
  - (A) Ash must be removed from the ACI during burning as necessary to maintain efficient combustion.
  - (B) Ash must be removed from the ACI in such a manner as to minimize the ash becoming airborne.
  - (C) All material removed from the ACI must be completely extinguished before being disposed of or placed in contact with combustible material, and must be stored in a manner that does not constitute a fire hazard or allow the material to smolder or burn outside of the ACI.
- (2) **Disposal.** The ash generated from an ACI operated under this section must be disposed of by one of the following methods:
  - (A) buried on-site in an ACI trench, if deed recorded and a copy of the document is provided to the executive director as required by §330.7 of this title (relating to Deed Recordation);
  - (B) sent to a Type I landfill, if the ash is containerized and no hot coals are present; or
  - (C) beneficially used, if the use is determined to be acceptable by the executive director in accordance with §330.8 of this title (relating to Notification Requirements).

(g) Other requirements.

- (1) **Local restrictions.** This section does not exempt ACIs from any local government regulations or other local government requirements, permits, registrations, or other authorizations required by local authorities.
- (2) **State air regulations.** This section does not exempt ACIs from compliance with any additional state air regulations.
- (3) **Federal air requirements.** Registrations for permanent ACIs must address the applicability of 40 Code of Federal Regulations (CFR) Part 60, Subpart CCCC, Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced After November 30, 1999 or for Which Modification or Reconstruction Is Commenced on or After June 1, 2001 (as published in the December 1, 2000 issue of the *Federal Register*). If determined to be applicable, commercial and industrial solid waste incinerators must demonstrate compliance with this federal regulation, including initial stack sampling, opacity readings, reporting, and recordkeeping.
- (4) **State waste regulations.**
  - (A) **Landfill sites:**
    - (i) ACIs located at a landfill require separate authorization by the executive director in accordance with §330.4 of this title (relating to Permit Required); and
    - (ii) below-ground ACIs must be located in undisturbed soil not previously excavated, built up, compacted, or used in any type of active landfill operation.
  - (B) **Ash disposal.** For materials authorized to be burned under this section and the resulting ash from ACIs, categorized as municipal solid waste as defined in §330.2 of this title (relating to Definitions), compliance with this section serves as a commission authorization to store, process, remove, and/or dispose of the ash resulting from the operation of ACIs as required by §330.4(a) of this title.
- (5) **State water regulations.** Nothing in this section removes the responsibility of the owner/operator from obtaining any necessary authorization under Chapter 308 of this title (relating to Criteria and Standards for the National Pollutant Discharge Elimination System).

(h) Administrative.

- (1) **Multiple locations at a single site.** Multiple ACIs at a given site may be combined into a single registration if individual ACI locations at the site are in compliance with all design requirements and operating restrictions. Operations for all ACIs under common control at a given site must cumulatively meet the annual hourly limitations as listed.
- (2) **Registration.**
  - (A) ACIs must be initially registered with the executive director using the Core Data Form and Form PI-7.
  - (B) Re-registration is required when any notice of enforcement is issued by the commission, or delegated representative, to the owner or operator of an ACI facility or every five years, whichever occurs first.
  - (C) Any ACI used for emergency clean-up operations does not require registration, but the owner or operator shall meet the notification requirements of this section except for the 14-day prior notice requirement.
  - (D) Registration reviews will include site approval and a compliance history evaluation in accordance with Chapter 60 of this title (relating to Compliance History).
- (3) **Notification.** Notifications are not subject to the requirements of §106.50 of this title (relating to Registration Fees for Permits by Rule) or Chapter 60 of this title.
  - (A) The owner or operator of an ACI that has previously been registered with the executive director in accordance with this section and is being relocated to a new site, other than a landfill, shall notify the appropriate regional office and any local air pollution control agency having jurisdiction over the site.
  - (B) Notifications must be in writing using the Regional Standard Permit/Permit by Rule Relocation Form, include a return receipt, and be received by the regional director and any local air pollution control agency having jurisdiction over the site at least 14 calendar days prior to locating at the site.
- (4) **Records.** To demonstrate compliance with this section and §106.8 of this title (relating to Recordkeeping), owners or operators of ACIs shall, at a minimum, meet the following requirements.
  - (A) The ACI must be equipped with a run time meter. A written record or log of the hours of operation of the ACI must be maintained at the site and made available at the request of personnel from the commission or any air pollution control program having jurisdiction. This run time record or log must be organized such that compliance with the requirements of this section can be readily determined.
  - (B) Records must be kept to demonstrate compliance with all operational or location requirements of this section. These records must include a copy of the return receipt demonstrating notification to the appropriate regional office and local air pollution control programs having jurisdiction, and plot plans showing distance limits are met. For portable facilities, once relocated to a new site, records must be maintained at a central location for a two-year rolling period.
  - (C) A copy of this section and any operating instructions must be kept at the burn site, followed by owners or operators, and made available at the request of personnel from the commission or any local air pollution control program having jurisdiction.
  - (D) The ACI must be clearly and permanently marked with the regulated entity (preferred) or account identification number on the fan manifold or aboveground unit.

# **ATTACHMENT 4**



*"Exposing The Power of God's Word Verse by Verse"*

Received  
1-9-09  
2:PM

January 9, 2009

Mr. Lalo Flores, C.B.O.  
Building Official  
Permits & Inspections Division  
1522 Texas Parkway  
Missouri City, Texas 77489

Re: Regarding 2008 Ordinances

Dear Mr. Flores,

This letter is to meet with the Construction Board concerning an ordinance that is very misleading and has caused us a problem with our contractor.

It is Article II standards

307.2 Permits for Fire Burning, Trench Burning  
307.2.1 and 307.22  
307.3 - 307.6 Trench Burning

Please call me to discuss this and to set up a meeting.

I look forward to hearing from you.

Thank you

Sincerely,

Rudolph White, Jr.  
Senior Pastor